

However, we continue to show overall improvement compared to the same period before the schedule adjustments.

#### *Order To Show Cause*

The FAA has issued a notice of proposed rulemaking to address appropriate limitations on scheduled operations at O'Hare. The comment period for the proposed rule closed on May 24, and the FAA and the Office of the Secretary of Transportation are completing the rulemaking process. However, the FAA cannot implement a final rule sufficiently in advance of the August 2004 order's current expiration date.

To prevent a recurrence of overscheduling at O'Hare during the interim between the expiration of the August 2004 order on April 1, 2006, and the expected effective date of the rule, the FAA tentatively intends to extend the August 2004 order. The limits on arrivals and the allocation of arrival authority embodied in the August 2004 order reflect the FAA's agreements with U.S. and Canadian air carriers. As a result, maintaining the order through the summer scheduling season constitutes a reasonable approach to preventing unacceptable congestion and delays at O'Hare. In addition, we find that it is reasonable to match this proposed extension of the August 2004 order with the scheduling cycle for summer 2006. The August 2004 order, as extended, would expire on October 28, 2006.

Independence Air, which was assigned ten arrivals in the August 2004 order, ceased all operations at O'Hare on January 5, 2006. The August 2004 order does not include a mechanism to reallocate such unused capacity; however, it does not appear that the arrival authority assigned to Independence Air is excess capacity. The principal premise for the August 2004 order was the FAA's determination that O'Hare at present can accommodate 88 scheduled arrivals per hour in average meteorological conditions without triggering intolerable congestion-related delays. In negotiating the schedule adjustments among individual air carriers for the August 2004 order, however, several peak afternoon and evening hours received scheduled arrivals that exceed the agency's preferred limit of 88 scheduled arrivals per hour. Accordingly, the unused arrival times assigned to Independence Air under the order would offset the hours that were scheduled above the preferred limit, and we tentatively conclude that it is operationally beneficial not to reallocate

the arrival times formerly used by Independence Air at this time.

Accordingly, the FAA directs all interested persons to show cause why the FAA should not make final its tentative findings and tentative decision to extend the August 2004 order through October 28, 2006, by filing their written views in Docket No. FAA-2004-16944 on or before March 22, 2006. The FAA is not soliciting views on the issues separately under consideration in the proposed rulemaking. Therefore, any submissions to the current docket should be limited to the issue of extending the August 2004 order.

Issued in Washington, DC, on March 13, 2006.

**Rebecca Byers MacPherson,**

*Assistant Chief Counsel for Regulation.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Pipeline and Hazardous Materials Safety Administration**

[Docket No. PHMSA-04-18858; Notice 2]

#### **Pipeline Safety: Grant of Waiver; Duke Energy Gas Transmission Company**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Notice; Grant of Waiver.

**SUMMARY:** Duke Energy Gas Transmission Company (DEGT) petitioned the Pipeline and Hazardous Materials Safety Administration (PHMSA) for a waiver of compliance with 49 CFR 192.611, which requires natural gas pipeline operators to confirm or revise the maximum allowable operating pressure of a pipeline after a change in class location. DEGT requested the waiver for certain segments of its natural gas pipeline located in Tennessee and Kentucky that have changed, and for segments that may change from Class 1 to Class 2 in the future. Under the pipeline safety regulations, class location indicates the population density near a pipeline. As the population along a pipeline increases, the class location increases. DEGT proposed to conduct a set of alternative risk control activities, in lieu of pipe replacement or pressure reduction, on all the segments requested in the waiver.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

In accordance with 49 U.S.C. 60126, PHMSA established the Risk

Management Demonstration Program (RMDP) in partnership with operators of natural gas and hazardous liquid pipeline facilities. The RMDP determines how risk management principles can be used to compliment and improve the existing Federal pipeline safety regulatory process. Under the RMDP, pipeline operators proposed risk management projects to demonstrate how a structured and formalized risk management process could enable a company to customize its safety program to allocate resources for its pipeline's particular risks, which would lead to an enhanced level of safety and environmental protection. DEGT and 11 other pipeline companies were selected as potential candidates for RMDP projects.<sup>1</sup> In evaluating DEGT as a RMDP candidate, PHMSA and DEGT engaged in a consultation process in which DEGT's safety practices and pipeline risk management program were scrutinized. During this consultation process, DEGT identified 21 sites where the class location had changed from Class 1 to Class 2 along the pipeline route of 2 compressor station discharges—1 located in Tennessee and the other in Kentucky. These segments include DEGT's 3 parallel natural gas pipelines, Lines 10, 15, and 25, which are part of its Texas Eastern Pipeline System.

While awaiting approval of its risk demonstration project, on October 5, 2000, DEGT requested a waiver of compliance from 49 CFR 192.611, for the 15 pipe segments located in Tennessee that had changed from Class 1 to Class 2. The Federal pipeline safety regulations at § 192.609 require a gas pipeline operator to complete a class location change study whenever they believe an increase in population density may have caused a change in class location as defined in § 192.5. If a new class location is confirmed, the operator is required to either reduce pressure or replace the pipe in compliance with § 192.611.

Section 192.5(a)(1) defines a "class location unit" as an onshore area extending 220 yards (200 meters) on either side of the centerline of any continuous one mile length of pipeline. The class location for any unit is determined according to the following criteria in § 192.5(b):

Class 1—an offshore area or 10 or fewer buildings intended for human occupancy;

<sup>1</sup> "Candidates for the Pipeline Risk Management Demonstration Program" (62 FR 143; July 25, 1997); "Pipeline Safety: Remaining Candidates for the Pipeline Risk Management Demonstration Program" (62 FR 197; October 10, 1997).

Class 2—more than 10 but less than 46 buildings intended for human occupancy;

Class 3—46 or more buildings intended for human occupancy, or areas where a pipeline lies within 100 yards (91 meters) of either a building or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period;

Class 4—buildings with four or more stories above ground are prevalent (e.g., large office buildings).

Pipeline safety regulations impose more stringent design and operation requirements as the class location increases. When a class location changes to a higher class (e.g., from Class 1 to Class 2), § 192.611 requires the operator to reduce the pressure on the pipeline to provide an additional margin of safety. The operator may be able to avoid the pressure reduction if a pressure test on the pipe confirms that the prescribed safety margin exists. If a previous pressure test has not confirmed the prescribed safety margin, the operator must test the pipe to confirm the margin, reduce the pressure, or

replace the pipe with new pipe. DEGT proposed to conduct alternative risk control activities in lieu of compliance with § 192.611 and asserted that the alternative risk control activities would provide a level of safety equivalent to that required by § 192.611.

On December 11, 2000, PHMSA published a notice in the **Federal Register** seeking comments on its intent to grant DEGT the waiver (65 FR 77419); no comments were received. On March 9, 2001, PHMSA granted and published the waiver for the 15 pipe segments in Tennessee (66 FR 14256).

On June 1, 2004, DEGT submitted a second petition for waiver of § 192.611. DEGT requested the waiver apply to the 21 pipe segments located in Tennessee and Kentucky that changed from Class 1 to Class 2 and to segments that may change from Class 1 to Class 2 in the future. These were the segments initially identified for DEGT's Risk Demonstration project, including the 15 segments on which PHMSA had granted the waiver in March 2001. DEGT also requested the waiver apply to all pipeline segments that may, in the future, change from Class 1 to Class 2. These pipeline segments are found at DEGT's Mt. Pleasant, Tennessee

compressor station discharge, Gladeville compressor station, and the pipeline segments between its Owingsville, Kentucky compressor station discharge and Wheelersburg compressor station.

On August 16, 2004, PHMSA published a notice in the **Federal Register** requesting public comments on DEGT's June 1, 2004 request for waiver (69 FR 50438); PHMSA did not receive any comments.

**DEGT's Waiver Request**

DEGT's waiver request involves 3 parallel pipelines in its Texas Eastern Pipeline System, Lines 10, 15, and 25: (1) 3 line segments running downstream of its Mt. Pleasant, Tennessee compressor station discharge to its Gladeville compressor station, each approximately 63.6 miles; and (2) 3 line segments running downstream of its Owingsville, Kentucky compressor station discharge to its Wheelersburg compressor station, each approximately 60.5 miles (collectively, the "waiver sites").

Within the waiver sites are 21 pipe segments (identified in the following table) that have changed from Class 1 to Class 2:

	County & State	Line number	Begin mile-post	End mile-post
<b>Mt. Pleasant Station Discharge:</b>				
Site #1 .....	Maury Co., Tennessee .....	10	226.88	227.35
		15	226.90	227.50
		25	227.05	227.50
Site #2 .....	Maury Co., Tennessee .....	10	228.49	229.07
		15	228.65	229.21
		25	228.63	229.22
Site #3 .....	Maury Co., Tennessee .....	10	238.01	239.19
		15	238.17	239.34
		25	238.17	239.36
Site #3A .....	Maury Co., Tennessee .....	25	241.69	241.72
Site #4 .....	Maury Co., Tennessee .....	10	247.79	247.88
		15	247.94	248.04
		25	247.94	248.03
Site #5 .....	Williamson Co., Tennessee .....	10	264.03	265.31
		15	264.19	265.49
		25	264.24	265.48
<b>Owingsville Station Discharge:</b>				
Site #6 .....	Fleming Co., Kentucky .....	10	514.78	514.98
		25	515.25	515.28
Site #7 .....	Lewis Co., Kentucky .....	10	531.10	533.33
		15	531.54	533.75
		25	531.54	533.76

DEGT requested that the waiver granted on March 9, 2001 for the 15 segments be extended to include the 6 segments in Kentucky that have changed from Class 1 to Class 2. This request would include the segments within both the Mt. Pleasant compressor station discharge and the Owingsville compressor station discharge that may

change from Class 1 to Class 2 in the future.

DEGT has implemented the alternative risk control activities that were outlined in the waiver issued on March 9, 2001. DEGT noted that it has also implemented the following risk control activities on the above identified 15 segments in Tennessee and the six segments in Kentucky:

- Conducted internal inspections on the entire length of the waiver segments using geometry and magnetic flux leakage in-line inspection tools. These tools were used to identify indications of wall loss (e.g., corrosion), as well as dents and gouges from initial construction damage or damage from third party excavators working along the pipeline right-of-way. The internal

inspection included Lines 10, 15, and 25 in the Mt. Pleasant compressor station discharge covering approximately 190 miles of pipe, and Lines 10, 15, and 25 in the Owingsville compressor station discharge covering approximately 185 miles of pipe. The results of the inspection were provided to PHMSA's Southern Region.

- Repaired indications of corrosion, existing construction damage, and existing outside force damage identified by the internal inspection tools using conservative investigation and repair criteria.
- Hydrostatically tested portions of Line 10 that previously had not been tested to 100 percent of the specified minimum yield strength. This includes 2 sites in Tennessee (2.5 miles northwest of Rally Hill in Maury County and 3.5 miles east-northeast of Arrington in Williamson County) and 1 site in Kentucky (4.4 miles southeast of Kinniconick in Lewis County). The results of the inspection were provided to PHMSA's Southern Region.

- Performed enhanced third-party damage prevention activities. This included installation, for a one-year trial period, of a TransWave monitoring system on the full length of pipeline within the Mt. Pleasant discharge (63.6 miles on each line). The TransWave system was used to monitor the change in waveform of small currents that may be caused by disturbances created by excavation or other third-party activities. The TransWave system was employed to determine its reliability and usefulness at detecting third-party encroachments (construction, excavation, etc.) in the pipeline right-of-way. At the conclusion of the one-year trial period, DEGT submitted the final test results to PHMSA's Southern Region.

PHMSA has determined that these activities provide an equivalent level of protection and safety as that provided by 49 CFR § 192.611.

#### Grant of Waiver

In light of the aforementioned, PHMSA finds that granting DEGT a waiver from complying with 49 CFR 192.611 for the entire 21 pipeline segments located along certain segments of its natural gas pipeline in Tennessee and Kentucky that have changed from Class 1 to Class 2 and for those segments that may change from Class 1 to Class 2 in the future, is not inconsistent with pipeline safety regulations. The alternative activities DEGT conducted on the 21 segments where a class location change occurred provides an equivalent level of safety and protection to that provided by the regulations at 49

CFR 192.611. The actions required by this waiver for future class location sites will also provide equivalent safety and protection. The grant of this waiver will conclude all PHMSA action on DEGT's projects under the RMDP.

Under 49 CFR 192.611, PHMSA grants DEGT's request for a waiver for the 21 segments on Lines 10, 15, and 25 within its Mt. Pleasant, Tennessee compressor station discharge to its Gladeville compressor station discharge and within its Owingsville, Kentucky compressor station discharge to its Wheelersburg compressor station discharge that has changed from Class 1 to Class 2. This waiver supersedes the waiver granted on March 9, 2001.

PHMSA further grants DEGT's request for waiver of the requirements of 49 CFR 192.611 for the segments on Lines 10, 15, and 25 within its Mt. Pleasant, Tennessee compressor station discharge to its Gladeville compressor station discharge and within its Owingsville, Kentucky compressor station discharge to its Wheelersburg compressor station discharge that may change from Class 1 to Class 2 in the future.

This waiver may change certain line segments from Class 1 to Class 2. This will be contingent upon DEGT providing information and notification to PHMSA, and PHMSA not objecting to including the line segments. DEGT will not be allowed to apply the waiver to any site that PHMSA objects to.

Should DEGT fail to comply with any terms of the waiver, or should PHMSA determine that the terms of this waiver are no longer appropriate or that the waiver is inconsistent with pipeline safety, PHMSA may revoke this waiver and require DEGT to comply with the regulatory requirements of 49 CFR 192.611 and any other applicable regulations.

This waiver is granted on the condition that DEGT complies with the following requirements:

1. DEGT must meet the technical criteria of the PHMSA Class Change Waiver Protocol or other criteria for class location waivers that PHMSA may adopt for any future class change sites within the waiver segments that change from Class 1 to Class 2.

2. DEGT must provide prior notice to PHMSA's Southern Region of its intent to rely on this waiver, rather than replace pipe, in any future class change sites along the waiver segments so that PHMSA can independently verify that the criteria have been met. This notice must include a schedule of any remedial measures to be performed in future waiver sites. PHMSA may request additional information or clarification before allowing DEGT to apply the

waiver to any future site. DEGT may proceed with the waiver on the future site unless PHMSA objects.

3. DEGT must conduct additional public information activities in the populated areas along all waiver segments. This should include providing information to local emergency response personnel/agencies about the operation of the pipeline, the possibility of accidents, and actions that must be taken in the event of an accident on the pipeline.

4. DEGT must conduct future inspections of the waiver segments and remediate any defects identified in the waiver segments in accordance with subpart O of 49 CFR part 192.

5. Subsequent in-line inspections for the waiver sites must be scheduled in accordance with 49 CFR part 192, subpart O.

6. The waiver sites must be in compliance with American Society of Mechanical Engineer's standard B31.8S criteria for stress corrosion cracking site identification and site investigation/testing.

7. DEGT must provide the PHMSA's Southern Region with sufficient advance notice to enable PHMSA staff to attend and participate in all significant risk assessment activities involving the waiver segments.

8. Within the three months following approval of this waiver and annually thereafter, DEGT is required to report the following information to PHMSA's Southern Region:

- The economic benefit to the company. This should address both the costs avoided from not replacing the pipe, and the added costs of the inspection program (required for the initial report only).

- In the first annual report, fully describe how the public benefits from energy availability. Should address the benefits of avoided disruptions as a consequence of pipe replacement and the benefits of maintaining system capacity. Subsequent reports must indicate any changes to this initial assessment.

- The results of any in-line inspections or direct assessments performed during the previous year within the inspection area containing the waiver location(s).

- Any new integrity threats identified during the previous year within the inspection area containing the waiver location(s).

- Any encroachment of the inspection area including the waiver location(s) and new residences (by number) or areas of public congregation.

- Any incidents (both reportable and non reportable) that occurred during the

previous year associated with the inspection area containing the waiver location(s).

- Any leaks on the pipeline (both reportable and non reportable) that occurred during the previous year in the inspection area containing the waiver location(s).

- All repairs on the pipeline made during the previous year in the inspection area containing the waiver location(s).

- On-going damage prevention initiatives on the pipeline in the inspection area containing the waiver location(s) and a discussion on their success.

- Any mergers, acquisitions, transfers of assets, or other events affecting the regulatory responsibility of the company operating the pipeline to which the waiver applies.

**Authority:** 49 U.S.C. 60118(c); 49 CFR 1.53.

Issued in Washington, DC, on March 13, 2006.

**Joy Kadnar,**

*Director for Engineering and Engineering Support.*

[FR Doc. E6-3833 Filed 3-15-06; 8:45 am]

**BILLING CODE 4910-60-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-33 (Sub-No. 239X)]

#### Union Pacific Railroad Company— Discontinuance Exemption—in Oklahoma City, OK

Union Pacific Railroad Company (UP) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over a 0.42-mile line of railroad between Stiles Avenue to the point of connection with the BNSF Railway Company (BNSF) line near Second Street (the Old Rock Island Main) in Oklahoma City, Oklahoma County, OK.<sup>1</sup> There are no mileposts on the line. The line traverses United States Postal Service Zip Code 73102.

UP has certified that: (1) No traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided

in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C.91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 15, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2),<sup>2</sup> must be filed by March 27, 2006.<sup>3</sup> Petitions to reopen must be filed by April 5, 2006, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to UP's representative: Robert T. Opal, General Commerce Counsel, Union Pacific Railroad Company, 1400 Douglas St., STOP 1580, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: March 10, 2006.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. E6-3832 Filed 3-15-06; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

March 9, 2006.

The Department of Treasury has submitted the following public

<sup>2</sup> Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1,200. See 49 CFR 1002.2(f)(25).

<sup>3</sup> Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively.

information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before April 17, 2006 to be assured of consideration.

### Internal Revenue Service (IRS)

*OMB Number:* 1545-0202.

*Type of Review:* Extension.

*Title:* Form 5310, Application for Determination for Terminating Plan; Form 6088, Distributable Benefits from Employee Pension Benefit Plans.

*Form:* IRS Form-5310 and 6088.

*Description:* Employees who have qualified deferred compensation plans can take an income tax deduction for contributions to their plans. IRS uses the data on Forms 5310 and 6088 to determine whether a plan still qualifies and whether there is any discrimination in benefits.

*Respondents:* Business or other for-profit.

*Estimated Total Burden Hours:* 1,813,650 hours.

*OMB Number:* 1545-1120.

*Type of Review:* Extension.

*Title:* CO-69-87 and CO-68-87 (Final) Final Regulations Under Sections 382 and 383 of the Internal Revenue Code of 1986; Pre-change Attributes; CO-18-90 (Final) Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards.

*Description:* (CO-69-87 and CO-68-87) these regulations require reporting by a corporation after it undergoes an "ownership change" under sections 382 and 383. Corporations required to report under these regulations include those with capital loss carryovers and excess credits. (CO-18-90) These regulations provide for rules for the treatment of options under IRC section 382 for purposes of determining whether a corporation undergoes an ownership change. The regulation allows for certain elections for corporations whose stock is subject to options.

*Respondents:* Business or other for-profit.

*Estimated Total Burden Hours:* 220,575 hours.

*OMB Number:* 1545-1617.

<sup>1</sup> Apparently, BNSF holds trackage rights authority over the line which will not be affected by this exemption.